

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

M&L Enterprises, Inc., )  
d/b/a Skyline Telephone )  
Company )

AAD 01-\_\_\_\_\_

Petition for Waiver of )  
Sections 36.611, 36.612 )  
and 69.2(hh) of the )  
Commission's Rules )

CC: 96-45

To: Chief, Common Carrier Bureau

Petition for Waiver of Sections 36.611, 36.612  
and 69.2(hh) of the Commissions Rules

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### Summary

Skyline Telephone is a new local exchange company that is initiating telephone service within a high-cost rural study area. Skyline Telephone will be eligible to receive USF cost recovery assistance. Under the Commission's Rules, calculation of USF payments is based on historical cost information. Since Skyline Telephone is a new company, it does not have historical cost information. Application of the Commission's Rules would preclude Skyline Telephone from receiving USF payments until 2003.

To better meet the public policy goals contained in the Telecommunications Act of 1996 (Public Law No. 104-104, 110 Stat.56) (the "Act") and the Commission's Rules, and to more economically serve its customers, Skyline Telephone seeks a limited waiver of the USF Rules (47 CFR 36.611 and 36.612) in order to permit immediate access to USF funds based upon Skyline Telephone's current data for USF reporting purposes for an interim period until the Skyline Telephone study area data is available on a basis that represents a full year of operational expenses. The grant of this waiver request will ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost areas and maintaining affordable local service rates. In

addition, waiver of 47 CFR 69.2(hh) is sought to allow Skyline Telephone to participate in NECA.

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**To: Chief, Common Carrier Bureau**

**Petition for Waiver of Sections 36.611, 36.612  
and 69.2(hh) of the Commissions Rules**

M&L Enterprises, Inc., d/b/a Skyline Telephone Company ("Skyline Telephone"), by its attorney, and pursuant to Sections 0.91 and 1.3 of the Commission's Rules,<sup>1</sup> hereby requests waiver of Section 36.611, Section 36.612 and Section 69.2(hh) of the Commission's Rules<sup>2</sup> to enable Skyline Telephone to receive universal service fund ("USF") support for an interim period until (1) the Skyline Telephone study area data is available on a basis that represents a full year of operational expenses, (2) this

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<sup>1</sup> 47 CFR § 0.91, 1.3.

<sup>2</sup> See 47 CFR § 36.611, 47 CFR § 36.612 and 47 CFR § 69.22(hh).

data has been submitted to the National Exchange Carrier Association, Inc. ("NECA"), and (3) the data is used for ongoing USF cost allocation and recovery purposes, as provided in the Commission's Rules. Skyline Telephone also requests the Commission to direct NECA to distribute these payments consistent with the methodology proposed herein.

To better meet the public policy goals contained in the Telecommunications Act of 1996 (Public Law No. 104-104, 110 Stat.56) (the "Act") and the Commission's Rules, and to more economically serve its customers, Skyline Telephone seeks this limited waiver of the USF Rules in order to permit immediate access to USF funds based upon Skyline Telephone's current data for USF reporting purposes for an interim period until the Skyline Telephone study area data is available on a basis that represents a full year of operational expenses. The grant of this waiver request will ensure administration of the USF in a manner consistent with the Commission's goal of assisting local exchange carriers serving high-cost areas and maintaining affordable local service rates.

#### I. Background

Skyline Telephone is a newly-formed telephone company. On June 28, 2000 Skyline Telephone received authority from the Washington Utilities and Transportation Commission to

operate in the State of Washington as a telecommunications carrier.<sup>3</sup> On April 26, 2001, Skyline Telephone received designation as an eligible telecommunications carrier ("ETC") from the Washington Utilities and Transportation Commission.<sup>4</sup>

Skyline Telephone is initiating telephone service within a high-cost rural study area.<sup>5</sup> Skyline Telephone will be eligible to receive USF cost recovery assistance. Under the Commission's Rules, calculation of USF payments is based on historical cost information. Since Skyline Telephone is a new company beginning service to currently

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<sup>3</sup> See Attachment A. Order Authorizing Registration, UT-000943 (June 28, 2000).

<sup>4</sup> See Attachment B. Order Granting Petition of M&L Enterprises, Inc., for Designation as an Eligible Telecommunications Company, UT-013022 (April 26, 2001). Pursuant to the Commission's decision in In the Matter of Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas, Memorandum Opinion and Order, DA 9918-44 (released September 9, 1999), the Washington Commission designates ETCs on an exchange rather than study area basis. Since Skyline Telephone serves only one exchange, the difference is not material.

<sup>5</sup> Skyline Telephone is not required to seek a "study area" waiver for the purpose of establishing a study area serving what was an unserved area at the time Skyline Telephone began service. See, In the Matter of Request for Clarification Filed by the National Exchange Carrier Association, Inc. and Petitions for Waivers Filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc. Concerning the Definition of "Study Area" Contained in the Part 36 Appendix -- Glossary of the Commission's Rules, Memorandum Opinion and Order, DA 96-1129, released July 16, 1996.

unserved areas, Skyline Telephone does not have historical cost information. Application of the Commission's Rules would preclude Skyline Telephone from receiving USF payments until 2003.<sup>6</sup> During this interim period, Skyline Telephone is compelled to look for other recovery mechanisms to recover the amounts that otherwise would be recovered through the USF in a manner consistent with established Commission policy and practice. Its options are to recover the necessary monies from either access rates charged to interexchange carriers or from its local customers, or some combination of both. This can result in the escalation of local rates which is directly contrary to the fundamental goal of USF. Or, as applied to access charges, may have a chilling effect on the entry of interexchange carriers to serve the customers, resulting in a lack of choice of interexchange service providers.

## II. Description of General Area

The Skyline Telephone service area is located within Okanogan County in the north central part of the State of Washington. The community to be served by Skyline

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<sup>6</sup> The data submission and filing requirements of Part 36 of the Commission's Rules operate in a manner to postpone eligibility of a newly-established local exchange carrier from receipt of USF support until its third year of operation. See, e.g. Border to Border Communications, Inc., 10 FCC Rcd. 5055 at 5055 (1995) ("Border to Border").



Telephone has been named the Mt. Hull exchange. The Mt. Hull exchange is located approximately twenty miles south of the U.S.-Canadian border. The closest town of any size is the town of Omak, population 5,000, located thirty-five miles to the south. The closest somewhat urban population is the city of Wenatchee located some one hundred twenty-five miles to the south.

This is hilly to mountainous terrain lying adjacent to the Oroville exchange served by Qwest Communications and the Tonasket exchange served by Verizon Northwest Incorporated. The area is sparsely settled, but does contain 150 full-time residents. Medical services and commercial services, including shopping, are obtained from the communities of Tonasket and Oroville.

This is a relatively arid region and is subject to frequent forest fires. In fact, in the summer of 1999, a forest fire endangered the region. Because the residents of the region were without telephone service, they had to drive door-to-door to notify one another of the approaching blaze.

Beyond personal safety issues, the residents of the Mt. Hull exchange were technologically isolated by the lack of telephone service from their communities of interest in Oroville and Tonasket and their schools and business

services.

Skyline Telephone has invested over \$890,000 to provide service in this region. It has obtained a loan from the Rural Telephone Finance Cooperative to fund the construction of these facilities. It has constructed a combination of fiber optic and copper distribution and backbone facilities. It has installed a digital switch in the area.

has  
cost  
data

Skyline Telephone's local service rates and intrastate access rates have been approved by the Washington Utilities and Transportation Commission. Skyline Telephone will participate in NECA as a cost company for purposes of NECA's traffic sensitive and common line pools.

### III. Waiver of Historic Cost Rules is in the Public Interest

Skyline Telephone, as a new company, has no historical cost information. Because the Commission's Rules require calculation of USF disbursements to be based on a carrier's historical cost information, application of the Commission's Rules in this instance would preclude Skyline Telephone from receiving USF payments until 2003. Skyline Telephone submits that this result is contrary to the basic

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<sup>~</sup> See Attachment C.

principles behind the USF program and that waiver of the rules would better serve the public interest.

Waiver of the Commission's Rules is appropriate where special circumstances warrant a departure from the general rule, and were such departures in the public interest.<sup>8</sup> In addition, the waiver should serve the policy goals and principles which underlie the waived rule.<sup>9</sup>

The primary goal of the USF program is to promote the nationwide availability of reasonably-priced telephone services by providing "direct assistance to the areas where it is most needed to ensure that telephone rates remain affordable for the average subscriber."<sup>10</sup> In this instance, adherence to the Commission's Rules will frustrate, rather than further, this goal by denying timely cost recovery from the USF to a new company just beginning to initiate service in a rural area. To remedy this situation, Skyline Telephone seeks a directive to NECA to calculate and remit USF support to Skyline Telephone with such calculation to be based temporarily on current, rather than historical,

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<sup>8</sup> Northeast Cellular Tel. Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>9</sup> WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

<sup>10</sup> In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, CC Docket No. 78-72, 80-286, released November 23, 1984, at ¶ 58.

costs until such time as historical data with USF recovery can be calculated is available.

USF is intended to address the Skyline Telephone situation. The Washington Utilities and Transportation Commission has authorized a local residential rate of \$19.50 per month for Skyline Telephone. The monthly revenue to be generated by these rates comes nowhere near the estimated cost of \$114.00 per month per loop for 2001 which Skyline Telephone requires to recover its costs.

The relief requested by Skyline Telephone is only temporary. It would last only so long as necessary until historical data consistent with the Commission's Rules is available for use in calculating USF support. Further, Skyline Telephone underscores that the relief it requests would include actual data. The USF payments would be based upon the actual costs incurred by Skyline Telephone to invest in the infrastructure used to provide service. Only the operating costs would be estimated. Even the operating costs would be subject to true-up adjustments.

#### IV. Good Cause Exists for the Requested Relief

To effectuate the intent of the Commission's Rules, a waiver of timing requirements is required to enable Skyline Telephone to participate in the USF on a timely basis. Grant of the waiver requested by Skyline Telephone will

allow Skyline Telephone to receive USF payments relatively close to the beginning of its initial operation (service to begin on a local basis within the Mt. Hull exchange in April, 2001 and expanding to reach the Oroville exchange, including toll and 911 access in May, 2001). Granting of the waiver will allow Skyline Telephone to receive USF payments based on current, rather than historical, data. By granting this waiver, the Commission will ensure that the public interest is properly served as NECA administers the USF in a manner consistent with the goals USF is intended to fulfill.

Cost recovery absent USF contribution will clearly place undue pressures on local rates, contrary to the purpose of USF. Consequently, application of historical cost methodology provisions of the USF would frustrate, rather than foster, realization of the goals of the USF program. Skyline Telephone respectfully requests waiver of historic cost requirements of the USF rules for an interim period.

#### V. Proposed Interim Methodology for USF Calculations

Skyline Telephone proposes to submit to NECA a rolling annualized average of current costs, which would be subject to quarterly true-up adjustments based upon actual costs. This methodology previously has met with Commission

approval.<sup>11</sup> Final USF payments to Skyline Telephone for the interim period would be based on actual costs for that period. Final payments for periods subsequent to the interim period would be based on the conventional historical data upon which USF payments are based. Data to support initial USF payments is set forth on Attachment D. Skyline Telephone proposes that payments begin based on the data it has provided, subject to the true-up mechanism described as follows: for the second quarter (April through June) 2001, Skyline Telephone will submit to NECA its actual costs for the quarter by September 30, 2001. This process would continue, inserting six months' actual data, nine months' actual data, etc. until such time as the USF calculation can be made entirely on the basis of historical data, consistent with Section 36.611 of the Commission's Rules.

As noted above, and as emphasized here, Skyline Telephone's proposal requires waiver of the Commission's Rules for a brief period, lasting only until such time as the specific calculations based on historical data, as set

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<sup>11</sup> Border to Border at 5056; In the Matter of Sandwich Isles Communities, Inc. Petition for Waiver of Section 36.611 of the Commission's Rules and Request for Clarification. Order DA 98-166, released February 3, 1998 ("Sandwich Isles").

forth in Section 36.611, can be made and used by NECA for Skyline Telephone's USF cost recovery.

VI. Waiver of 69.2(hh) is in the Public Interest

As pointed out in Sandwich Isles, to be a member of NECA, and to participate in its tariff, a carrier must be a "telephone company" as defined in Part 69 of the Commission's Rules. 47 CFR § 69.601. Part 69 defines a "telephone company" as an incumbent LEC as defined in Section 251(h) of the Act. 47 CFR § 69.2(hh). In addition, Section 36.611 of the Commission's Rules only applies to incumbent local exchange carriers ("LECs").<sup>12</sup>

As the Commission stated in Sandwich Isles, "The purpose of the incumbent LEC restriction in Section 36.611 is to distinguish competitive LECs from incumbent LECs for the purpose of calculating universal service support, not to impose interconnection requirements." Sandwich Isles at ¶ 15. Skyline Telephone will be the sole provider of service in the area it serves. It is not a competitive LEC. Further, Skyline Telephone qualifies as a rural telephone company under 47 U.S.C. § 153(37). Therefore, it is appropriate to waive the incumbent LEC requirements of Part 36 and Part 69 of the Commission's Rules for Skyline

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<sup>12</sup> 47 CFR 36.611.

Telephone, as the Commission did in the Sandwich Isles proceeding. Such a waiver will permit Skyline Telephone to become a member of NECA and to participate in NECA pools and tariffs, but will not affect Skyline Telephone's obligations under Section 251 of the Act.

In case there is any question, Skyline Telephone requests that the Commission recognize Skyline Telephone service territory in Washington as its study area. A map of the service area is attached as Attachment E.

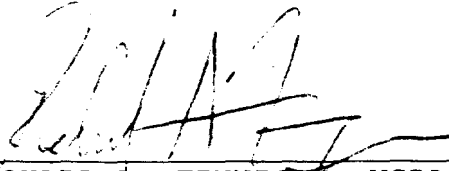
#### Conclusion

Skyline Telephone submits that good cause exists for the grant of this request. Skyline Telephone respectfully requests that the Bureau grant a waiver of Sections 36.611, 36.612 and 69.2(hh) of the Commission's Rules in order to permit Skyline Telephone to receive USF support beginning April, 2001, the initiation of Skyline Telephone's operations, and to direct NECA to begin making USF payments to Skyline Telephone utilizing the methodology stated herein for an interim period until the Skyline Telephone study area data is available on a basis that represents a full year of operational expenses, this data has been submitted to NECA, and the data is used for ongoing USF cost allocation recovery purposes.



The grant of Skyline Telephone's request will ensure administration of the USF in a manner which serves the public interest by promoting the provision of service to previously unserved customers.

Respectfully submitted this 25<sup>th</sup> day of May,  
2001.



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ATTACHMENT A

SERVICE DATE

JUN 28 2000

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of	)	
	)	DOCKET UT-000943
M&L ENTERPRISES	)	
	)	ORDER AUTHORIZING
For Registration as a Telecommunications	)	REGISTRATION; GRANTING WAIVER
Company, requested waiver of WAC 480-	)	OF WAC 480-121-010; AND GRANTING
121-010, and Approval of Tariff Pages on	)	LESS THAN STATUTORY NOTICE
Less than Statutory Notice	)	
.....	)	

### BACKGROUND

By application filed June 19, 2000, in Docket UT-000943, M&L Enterprises (M&L) seeks registration as a telecommunications company pursuant to RCW 80.36.350, and requests a waiver of WAC 480-121-010, Filing of Registration Application, Competitive Classification Petition, and Price List. In accordance with WAC 480-80-240, Less Than Statutory Notice, M&L also requests that the tariff pages relating to its local access and network access services submitted with the application become effective on less than statutory notice.

### DISCUSSION

M&L proposes to register with the Commission as a telecommunications company to offer basic telecommunications services beginning in October, 2000, to people in Fire District #12 in the Mt. Hull area near Oroville and Tonasket. To do so, M&L may use copper or fiber optic transmission materials and methods. As a prerequisite for many of the necessary steps involved in preparing to construct facilities to serve the people who live in the area, M&L requires a registration at this time.

WAC 480-121-010 requires that applications for registration, petitions for competitive classification, and price lists must be submitted at the same time. M&L requests a waiver of the competitive classification and price list requirements in WAC 480-121-010 because it will not face effective competition when it plans to commence service, so it is currently unable to support a petition for competitive classification. Therefore, M&L is not permitted to file a price list.

In accordance with WAC 480-80-240, M&L provided tariff pages that cover the terms and conditions of local access and network access service on fewer than 30 days notice to the Commission and the public. M&L requests approval of those pages on less than statutory

DOCKET UT-000943

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notice. Approval of these tariff sheets on less than statutory notice will enable M&L to secure the loan necessary to purchase equipment necessary to begin providing service in October, 2000. Staff has analyzed the tariff pages and finds them to be fair, just, reasonable and sufficient.

M&L is a foreign corporation, registered to do business in Washington, and headquartered in Midvale, Idaho, and is owned by Lane and Mary Williams.

M&L has provided information showing that it meets the requirements of RCW 80.36.350. Applicant intends to collect deposits from customers.

This matter was brought before the Commission at its regularly scheduled open meeting on June 28, 2000. The Commissioners, having been fully advised in the matter, and having determined the following order to be consistent with the public interest, directed the Secretary to enter the following order and related provisions.

#### FINDINGS OF FACT

1. M&L filed an application for registration as a telecommunications company pursuant to the provisions of RCW 80.36.350 to provide basic telecommunications services in the Mt. Hull area near Oroville and Tonasket.
2. M&L has requested a waiver of WAC 480-121-010 in accordance with WAC 480-121-015.
3. In accordance with WAC 480-80-240, M&L has requested that its tariff pages become effective on less than statutory notice on June 29, 2000.
4. As to form, the application meets the requirements of RCW 80.36.350 and complies with the Commission's rules and regulations except as waived by this Order.
5. The registration of M&L as a telecommunications company is consistent with the public interest.
6. In this proceeding, the Commission in no way endorses the financial viability of applicant nor the investment quality of any securities it may issue.

#### CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this registration application and M&L.

DOCKET UT-000943

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2. M&L should be registered as a telecommunications company pursuant to RCW 80.36.350.

3. The request for waiver of WAC 480-121-010 by M&L is consistent with the public interest and should be granted.

4. The request for less than statutory notice is consistent with the public interest and the tariff pages should become effective June 29, 2000.

### ORDER

#### THE COMMISSION ORDERS:

1. Effective on the date of this Order and subject to any conditions imposed, the Commission approves the application of M&L Enterprises requesting an order authorizing registration as a telecommunications company to provide service to the public in this state.

2. Effective on the date of this Order and subject to any conditions imposed, the Commission grants the request of M&L Enterprises for a waiver of WAC 480-121-010, Filing of Registration Application, Competitive Classification Petition, and Price List.

3. Effective on the date of this Order and subject to any conditions imposed, the Commission grants the request of M&L Enterprises for less than statutory notice of the tariff pages. The tariff pages submitted by M&L Enterprises will become effective on June 29, 2000.

4. Prior to providing service M&L Enterprises must file a complete tariff subject to the Commission's approval with an inserted effective date providing no less than 30 days of notice.

5. Registration of M&L Enterprises as a telecommunications company shall not be construed as an endorsement of financial viability nor of the investment quality of any securities it may issue.

6. As a telecommunications company providing service to the public in this state, M&L Enterprises is subject to the jurisdiction of this Commission under the provisions of Title 80 RCW and all rules and regulations adopted by the Commission.


7. M&L Enterprises is not authorized to provide alternate operator services, or prepaid calling services.

8. The Commission retains jurisdiction over the subject matter and the

Company to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective this 28<sup>th</sup> day of June, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
CAROLE J. WASHBURN, Secretary

ATTACHMENT B

**SERVICE DATE**

**APR 26 2001**

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION**

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-013022
M&L ENTERPRISES, INC.	)	
d/b/a SKYLINE TELEPHONE	)	ORDER GRANTING DESIGNATION
COMPANY	)	AS AN ELIGIBLE
	)	TELECOMMUNICATIONS CARRIER
For designation as an Eligible	)	
Telecommunication Carrier	)	
	)	
.....	)	

**BACKGROUND**

- 1 The Federal Telecommunications Act of 1996 (Act) substantially altered national telecommunications policy and contemplated that the states, acting through their state public utility commissions, would implement that policy by conducting various proceedings as outlined in the Act. The federal policy embodied in the Act coincides, to a great extent, with the preexisting telecommunications policies of Washington State as expressed by the Legislature and implemented by this Commission.
- 2 The Act, as well as Washington law, embraces the policy that certain telecommunications services should be universally available. Congress articulated the basics of what should be included as part of "universal service," in 47 U.S.C. §254(b), and established a Federal-State Joint Board on Universal Service to recommend to the Federal Communications Commission the details of what should be included within the concept of universally available telecommunications service. These services are to be supported in high-cost areas by money from a fund which is supported by carrier contributions. 47 U.S.C. §254(d); Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (November 8, 1996), and First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997) (Universal Service Order).
- 3 Congress provided that certain carriers, when designated "eligible telecommunications carriers" (ETCs), may draw from the fund for their provision of the described services in high-cost areas. The following services must be provided by a telecommunications carrier in order to be eligible for federal universal-service support: single-party service; voice-grade access to the public switched network; dual-tone multi-frequency signaling or its functional equivalent; access to emergency



services, including, in some circumstances, access to 911 and E911; access to operator services; access to interexchange services; access to directory assistance; and lifeline and link-up programs, including free toll-limitation services for qualifying low-income consumers.

- 4 Congress left to the state public utility commissions the task of designating “eligible telecommunications carriers.” 47 U.S.C. § 214(e)(2). In 1998, the Washington State Legislature authorized the Commission to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the Federal Telecommunications Act of 1996. RCW 80.36.610.

## MEMORANDUM

### I. PETITION

- 5 On March 28, 2001, M&L Enterprises, Inc. d/b/a Skyline Telephone Company (M&L Enterprises), filed with the Commission a petition seeking designation as an eligible telecommunications carrier for the service area described in its tariff as the Mount Hull exchange.

- 6 M&L Enterprises has completed most of the construction necessary to provide local and interexchange service to the residents of the Mount Hull exchange. The requirements of section 214(e) and 47 C.F.R. Part 54 will apply to M&L Enterprises at the time it commences local exchange service in the Mount Hull exchange. M&L Enterprises has requested a waiver of the requirement to provide toll limitation.

### II. STATUTORY BACKGROUND AND JURISDICTION

- 7 Section 214(e) of the Act sets forth the standards and processes for a state public utility commission designation of an eligible telecommunications carrier.
- 8 This section in effect states two general criteria for designating a carrier as an ETC: (1) the carrier must offer the “services” that are supported by the federal fund, and (2) the carrier must advertise the availability of those services. The carrier must fulfill these criteria “throughout the service area for which the designation is received.” 47 U.S.C. §214(e)(1).
- 9 The Commission has jurisdiction over this petition both because of the 1996 Act and because of those provisions of state law which give the Commission authority over the rates and practices of telecommunications companies and its power to define the scope and nature of a carrier’s service obligation. RCW 80.01.040(3), 80.36.080, 80.36.090, 80.36.140, 80.36.230, 80.36.610.

**A. Designation for Areas Other than a Petitioner's Study Area**

10 Section 214(e)(5) of the Act governs the determination of the geographic area in which the ETC will serve:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

11 As stated, "a service area means a geographic area established by the Commission." For non-rural companies, the authority to determine the geographic area of service areas is without limitation. In the case of an area served by a rural carrier, however, 214(e)(5) defines the service area as the carrier's "study area" unless the Commission and the FCC establish a different definition of service area. In establishing a service area different than the study area, the Commission must "take into account" the recommendations of the Federal-State Joint Board.

12 The language "take into account" does not require that we are bound to accept the study area, but only that we consider the Joint Board recommendations. We have done so. We also have considered the FCC discussion of this issue in its Universal Service Order.<sup>1</sup>

13 The FCC also noted that the "states should exercise this authority [to designate service areas] in a manner that promotes the pro-competitive goals of the 1996 Act . . ." Universal Service Order ¶184. As recommended by Staff, the pro-competitive goals of the Act favor designation of smaller, rather than larger, service areas. The caution by the FCC and the Joint Board that areas not be "unreasonably large," Universal Service Order ¶184, supports this conclusion.

14 In this instance, as a company registered with the Commission as a local exchange carrier in June 2000, M&L Enterprises does not have a study area. In the registration filing and materials accepted by the Commission, M&L Enterprises represented that it intends to serve a newly created exchange located where no other carrier has an exchange map on file. There is, therefore, no need for the Commission to make any

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<sup>1</sup> First Report and Order, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (May 8, 1997).

determinations with respect to incumbent rural local exchange companies for FCC concurrence.

**B. Waiver for Requirement of Providing Toll Control**

15 All petitioners who requested designation as an ETC prior to M&L Enterprises' petition requested a waiver for provision of toll limitation as a prerequisite for obtaining ETC designation. Those petitioners demonstrated in their petitions that exceptional circumstances exist which warrant the granting of a waiver for providing toll limitation as authorized by 47 C.F.R. §54.101(c). Those same exceptional circumstances, rooted in a lack of technological ability to provide toll control, will likely apply to M&L Enterprises at the time it begins service.

**C. Service Quality Issues**

16 In the deliberations on the Commission's first ETC designations in December 1997, Staff originally urged the Commission to include as a condition of granting ETC status a requirement that the carriers, abide by Commission service- quality standards set forth in WAC 480-120. A number of carriers contested the Commission's authority to so condition the designation. We need not reach that issue of legal authority because we conclude that the carriers' obligation to "offer the services that are supported by Federal universal service support mechanisms," as required by 47 U.S.C. §214(e)(A), requires not just willingness to offer the services, but actual performance of the services. Such performance in turn implies performance of the services at an adequate service level. As set forth below, whether an ETC-designated carrier is actually performing such service could arise in a proceeding to modify, revoke, or suspend the designation.

17 Requiring adequate service also is consistent with the pro-competitive policies of the 1996 Act. No company should be able to obtain a competitive advantage by avoiding its service-quality responsibilities. The Commission expects that all companies receiving ETC status will comply with relevant Commission rules.

**D. Modification, Revocation, or Suspension**

18 Given the changing dynamics of the market in the local exchange, the Commission may from time to time reopen these proceedings in order to modify the geographic area for which companies are designated. Such a proceeding may be commenced by the designated company, a petitioner for ETC status, by the Commission on its own motion, or by another appropriate person or entity.

19 In addition to geographic area modifications, the Commission has the authority to modify, revoke, or suspend the designations, should the prerequisites to the original

designation cease to exist.<sup>2</sup> For example, should the company no longer advertise its services throughout the designated area as required by 47 U.S.C. §214(e)(B), the Commission may revoke the designation or suspend it until the deficiency is corrected. Likewise, should the company cease to “offer the services that are supported by Federal universal service support mechanisms” as required by 47 U.S.C. §214(e)(A), the Commission may revoke or suspend the original designation. In making the determination of whether a designated company continues to offer such services, the Commission will look not just to the advertised availability of the services, but to the actual and timely delivery of those services. In determining whether a designated carrier is providing such service the Commission will be guided by currently accepted industry standards, including, but limited to, the quality of service rules contained in chapter 480-120 WAC.

20 The Commission may modify this order for other reasons permitted by the Act.

### FINDINGS OF FACT

- 21 1. M&L Enterprises is a telecommunications company authorized to conduct  
business in the state of Washington.
- 22 2. After taking into account and considering fully the recommendations of the  
Federal-State Joint Board, the Commission finds that the appropriate service  
area for the petitioner is at the exchange level.
- 23 3. The petitioner will offer all of the services that are to be supported by the  
federal universal service support mechanisms set forth in 47 C.F.R.  
§54.101(a), with the exception of toll limitation.
- 24 4. The petitioner will provide advertisement of the availability of the services  
that are to be provided by the federal universal-service support services at the  
time it first provides service, except as otherwise waived by this Order, and  
the charges therefore, using media of general distribution as required by 47  
U.S.C. §214(e)(1)(B).

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<sup>2</sup> Though the federal Act does not specify the means for revocation or modification of an ETC designation, the Commission has authority under state law to reopen any matter before it. RCW 80.04.210. Further, the federal Act contemplates such as it allows a state commission to designate ETCs on its own motion. 47 U.S.C. §214(e)(1)(2). There is nothing in that provision which limits a state commission on its own motion from re-designating a company already designated and in effect modifying the prior designation.

### CONCLUSIONS OF LAW

- 25        1.        The Commission has jurisdiction over the subject matter of this proceeding  
                 and the petitioner.
- 26        2.        Granting the relief requested in the petition, except as otherwise modified by  
                 this Order, is consistent with the public interest, convenience, and necessity,  
                 and is consistent with applicable state and federal law.
- 27        3.        The Commission need not designate a petitioner for a study area, and in the  
                 case of M&L Enterprises, the petitioner has no study area at this time. The  
                 Commission, after taking into account the recommendations of the Federal-  
                 State Joint Board, may designate companies for geographic areas other than  
                 their study areas without conducting an adjudicatory proceeding prior to such  
                 designation.
- 28        4.        The Commission has authority to modify, suspend, or revoke this designation,  
                 including the service areas accompanying this designation, at a future date.

### ORDER

- 29        1.        The petition of M&L Enterprises, Inc., d/b/a Skyline Telephone Company for  
                 designation as an eligible telecommunications carrier is granted.
- 30        2.        The geographic area for which the designation as an eligible  
                 telecommunications carrier is granted is the Mount Hull exchange.
- 31        3.        The requirement to provide toll control is waived until it is economically and  
                 technically feasible to provide it.
- 32        4.        M&L Enterprises, Inc., d/b/a Skyline Telephone Company must provide the  
                 required services at the time it first provides service to the Mount Hull  
                 exchange.
- 33        5.        M&L Enterprises, Inc., d/b/a Skyline Telephone Company is granted this  
                 designation, in part, so that it may qualify for federal universal service  
                 support.

DATED at Olympia, Washington, and effective this <sup>25<sup>th</sup></sup> day of April, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

  
MARILYN SHOWALTER, Chairwoman

  
RICHARD HEMSTAD, Commissioner

ATTACHMENT C

ATTACHMENT D



INVESTMENT  
FIXED ASSETS

December 31, 2000

2111.10 - VEHICLES	12,639.75
2111.11 - BLDGS - WA	33,556.96
2112.11 - SPECIAL PURP. VEHICLES	5,775.00
2113.11 - OTHER WORK EQUIPT	237,930.20
2122.11 - DIGITAL ELECTRONIC SWITCH	188,519.10
2122.52 - OFFICE FURN - PLANT	586.35
2124.51 - GENL PURPOSE COMPUTERS - ADM	3,571.46
2124.52 - GENL PURPOSE COMPUTERS - PLANT	2,414.99
2230.71 - CENTRAL OFFICE TRANS. - TOLL	21,971.03
2230.72 - CENTRAL OFFICE TRANS. - LOCAL	75,287.51
2423.71 - BURIED CABLE - TOLL	76,856.52
2423.72 - BURIED CABLE - LOCAL	172,120.96
2423.73 - BURIED CABLE - JOINT	86,035.57
3116.11 - ACCUM. DEP. OTHER WK EQUIPT	-206,026.14
8300.11 - INVESTMENT - KOMATSU	85,000.00
8300.21 - INVESTMENT - JOHN DEERE	70,000.00
8300.31 - INVESTMENT - KIOTI TRACTOR	14,000.00
8300.41 - INVESTMENT - 2001 DODGE PU	31,200.00
 TOTAL FIXED ASSETS	 <u>911,439.26</u>

ESTIMATED EXPENSES

PLANT SPECIFIC

GENERAL SUPPORT	7,599.00
C. O. SWITCH	5,051.00
C. O. TRANSMISSION	2,076.00
BURIED CABLE REPAIR	6,228.00
DEPRECIATION	48,921.00

OTHER

GENERAL PLANT ADMINISTRATION	16,477.00
CUSTOMER OPERATIONS	15,999.00
CORPORATE OPERATIONS	42,768.00
PROPERTY TAXES	6,945.00

TOTAL	<u>152,064.00</u>
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ATTACHMENT E

RECEIVED

M&L ENTERPRISES, INC.

OCT 13 2000

WASH. UT. & TRANS. COMM.

MT. HULL EXCHANGE SERVICE BOUNDARIES

Rev. 10-16-00

Attachment to  
Original Sheet No 49

PAGE 1 OF 2

R27E		R28E			
23	24	19	20	21	22
26	25	30	29	28	27
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OCT 13 2000

WASH. UT. &amp; TRANS. COMM.

WN U-1

Original Sheet No. 23

M&amp;L ENTERPRISES, INC.

Cancels \_\_\_\_\_ Sheet No. \_\_\_\_\_

## NETWORK ACCESS LINE SERVICE

## A. RATES - Access Lines (including Leased Lines)

MONTHLY RATES

	<u>Residence (R-1)</u>	<u>Business (B-1)</u>
1. Local Service	\$19.50	\$25.00

## B. CONDITIONS

1. The above rates apply to the provision of Access Lines which, when connected to a suitable telephone instrument provides access to the telephone network.

Instruments must be provided by the Subscriber, subject to the conditions described in the Connection With Subscriber-Owned Equipment portion of this tariff.

Additional instruments may be attached to Access Lines. The Company reserves the right to limit the number of instruments connected to an access line if they cause interference with the normal operation of the line.

2. Business Rates Apply:

At any location where activities are of a business, trade, or professional nature.  
At any location where the listing of service at that location indicates a business, trade, or profession.

Where only one Access Line is provided at a location which is both a residence and a business.

At schools, hospitals, libraries, churches, and other similar institutions.

3. Residence Rates Apply:

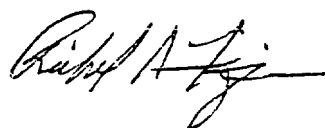
At a private residence where business listings are not provided and telephone service is not used for the conduct of business.

At the place of residence of a clergyman, physician, or other medical practitioner provided the Subscriber does not maintain an office in the residence.

Issued: October 13, 2000

Effective Date: November 13, 2000

Issued by: M&amp;L Enterprises, Inc.



By: Lane Williams, Manager

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WASH. UT. & TRANS. COMM.

WN U-1

Substitute  
Second Revised Sheet No. 28  
Canceling  
First Revised Sheet No. 28

M&L ENTERPRISES, INC.

NETWORK AND ACCESS TOLL SERVICE

<u>Tariff Section</u>	<u>Description</u>	<u>Per Access Minute</u>	
<u>Local Transport</u>	<u>Originating</u>		
	Per access minute	\$0.0390	
	<u>Terminating</u>		
	Per access minute	\$0.0110	
<u>Local Switching</u>	<u>Originating</u>		
	Per access minute	\$0.0190	
	<u>Terminating</u>		
	Per access minute	\$0.0110	
<u>Switched Access Universal Service Rate</u>			
	- Terminating	\$0.0600	(R)

(D)

(D)

IN REPLY OR ORDER BY WASH. UTILITY & TRANSPORTATION COMM., DOCKET NO. UT-010305

Issued: March 7, 2001  
Issued by: M&L Enterprises, Inc.

Effective Date: ~~April 5, 2001~~ April 1, 2001  
By: Richard A. Finnigan, Attorney